SIM BOON CHAI

v.

PUBLIC PROSECUTOR

HIGH COURT BORNEO, KUCHING
GEORGE SEAH J
[CRIMINAL APPEAL NO. KG 7 OF 1981]
20 OCTOBER & 7 NOVEMBER 1981

CRIMINAL PROCEDURE: *Sentence - No record of antecedents and character of accused - Penalty under regulations - Interpretation Act 1967, s. 27 - Control of Supplies Regulations 1974, Reg. 13(1) - Control of Supplies Act 1961 (Act 122), s. 22.*

The appellant in this case had pleaded guilty to the offence of failing to maintain a stock book of a scheduled article, an offence under reg. 13(1) of the Control of Supplies Regulations, 1974. The learned Magistrate noted:

> The accused is convicted on his own plea. Accordingly I fine the accused a sum of RM3,000 in default of 3 months' imprisonment.

The appellant appealed against the sentence.

George K.S. Seah J allowed the appeal and reduced the sentence to a fine of RM2,000 or in default 2 months' imprisonment. The learned Judge said that although time has not been expressly specified in reg. 13(1) of the Control of Supplies Regulations, 1974, the provision had to be read subject to s. 37 of the Interpretation Act 1967, which provides that "where a written law confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires". Entries in the stock book should therefore be made from time to time as occasions require them. The learned Judge said:

> As the purchases of sugar, a scheduled article, were made during the months of October and November 1980 entries in the stock book should have been made by the appellant or his agent on the various dates when the purchasers were made or upon receipt of the said invoices if the date of the purchase and the receipt of the invoice happens to differ. As the appellant had totally failed to record these 6 purchases of sugar in the stock book during the months of October and November 1980 he was plainly guilty of Reg. 13(1) of the Control of Suppliers Regulations, 1974.

In regard to sentence counsel for the appellant referred to s. 27 of Interpretation Act 1967, which provides that "subsidiary legislation may provide for persons guilty of offences thereunder to be liable on conviction to a fine or a term of imprisonment or both, but may not provide for any such fine to exceed one thousand dollars or any such term to exceed six months." The learned Judge said:

> The Senior Federal Counsel has argued that the provisions of s. 27 of the Interpretation Act 1967 do not apply to this case and that the section should not be used as a yardstick by the trial Magistrate for the purpose of sentence. If the legislature had intended that maximum fine for an offence under reg. 13(1) of the Control of Supplies Regulations 1974 should not exceed RM1,000 express provision would have been so enacted in the said Regulations. The Regulations are silent as to penalties which can be found in s. 22 of the Control of Supplies Act 1961 (Revised 1973). Subsection 1 of s. 22 provides for a maximum sentence of RM15,000 or to imprisonment for a term not exceeding 2 years or to both for first offender; and for a second or subsequent offence the maximum fine to be RM25,000 or 5 years' imprisonment or to both. This sub-section covers any person, other than a body corporate.

The learned Judge agreed with the submission of the Senior Federal Counsel that s. 27 of the Interpretation Act 1967 was irrelevant in considering the sentence to be passed on the appellant by the trial Magistrate, having regard to the express provision of s. 22 of the Counsel of Supplies Act 1961.

It may be questioned, in view of the fact that the Control of Supplies Regulations 1974 were silent as to penalties and that Reg. 20 of the Regulations did not provide expressly that a person who contravenes or fails to comply with the Regulations shall be guilty of an offence under the Control of Supplies Act 1961, whether s. 22 of the Act was applicable to offences under the Regulations. Section 22 speaks of an offence against the Act. However the expression "offence against this Act" is defined in s. 2 of the Act to include any contravention of a regulation made under the Act.

The learned Judge referred to the case of *PP v. Fam Kim Hock* [1957] MLJ 20 where it was held that the sentence of a Court of first instance should not be altered unless it is manifestly , wrong in the sense of being illegal or being unsuitable to the proved facts and circumstances. In this case he said:

> It is plain that the trial Magistrate did not record any evidence of antecedents and character of the accused before proceeding to pass sentence. In short, the trial Magistrate did not appear to have taken the following relevant factors into consideration:
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> (a) that the accused was a first offender;
>
> (b) that the accused did not maintain a stock book (Ex. P2) but had not kept it up-to-date and that the accused did not know that he had to maintain the stock book up-to-date; and
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> (c) that the accused had pleaded guilty to the charge.

Applying the principle in *Fam Kim Hock's* case the learned Judge was satisfied that the fine of RM3,000 was manifestly wrong in the sense of being unsuitable to the proved facts and circumstances of the case. He therefore set aside the sentence and substituted a fine of RM2,000 or in default two months' imprisonment.

Cases refereed to:
Abu Bakar bin Alif v. R. [1953] MLJ 19
R. v. Ball 35 CAR 164
PP v. Fam Kim Hock [1957] MLJ 20

Legislation referred to:
Control of Supplies Act 1961 (Revised 1973), s. 22
Control of Supplies Regulations 1974, reg. 13(1), (3)
Interpretation Act 1967, ss. 27, 37

For the appellant - Chan Khoon Ted; Chan & Chan
For the respondent - Nik Hashim bin Nik Abdul Rahman, DPP (Abang Abdul Rahaman bin Datuk Haji Abdul Rahim, DPP

JUDGMENT

George Seah J:

On 12 December 1980 at about 9.45 a.m. a party of Enforcement Officers from the Ministry of Trade and Industry, Kuching, Sarawak, made a surprise check on the appellant, who has been issued with a wholesaler licence by the Controller of Supplies, Kuala Lumpur to deal in 3 scheduled articles such as flour, sugar and cooking oil, and who carries on business under the trade name of Tai Seng Company at No. 95, Ang Cheng Ho Road, Kuching, Sarawak.

The officers found that the appellant had failed to maintain a stock book of scheduled articles where there should be entered particulars and every purchase of the said scheduled article showing the date, quantity, price, name and address of the seller in respect of these purchases. The appellant was accordingly charged under reg. 13(1) of the Control of Supplies Regulations 1974. He pleaded guilty to the charge and was convicted and fined RM3,000 or in default 3 months imprisonment.

The appellant, Sim Boon Chai, is dissatisfied with the fine and this appeal is against sentence only.

Before dealing with the appeal I would like to set out the relevant facts. It is common ground that when the Enforcement Officers from the Ministry of Trade and Industry visited the appellant's premises, they were handed a stock book relating to sugar which appears to have been made up to 10 September 1980. At the same time, the Enforcement Officers discovered that the appellant had made 6 purchases of sugar from Lian Hua Seng Co., Sdn. Bhd., particulars of which are as follows:

(i)	Invoice 64286	-	3 October 1980	-	RM 6,720	
(ii)	Invoice 64465	-	11 October 1980	-	RM 672	
(iii)	Invoice 64662	-	25 October 1980	-	RM 3,375	
(iv)	Invoice 64851	-	14 November 1980	-	RM 6,750	
(v)	Invoice 64886	-	15 November 1980	-	RM 6,750	
(vi)	Invoice 64937	-	18 November 1980	-	RM13,500	- RM37,767

It appears that the appellant had made 3 payments totalling RM50,967 on these dates and in respect of all of the abovenamed invoices, *viz*:

(a)	Receipt 24992 64286 and 63874)	-	14 November 1980	-	RM20,592	(Invoices 64465,
(b)	Receipt 25037	-	20 November 1980	-	RM 3,375	(Invoice 64662)
(c)	Receipt 25154	-	9 December 1980	-	RM27,000	(Invoices 64851, 64886 and 64937).

It is plain that these transactions spread over a period of slightly over 2 months from 3 October 1980 to 9 December 1980, and it is not disputed that the appellant had not entered these purchases in his stock book (Ex. P2).

Now, reg. 13(1) reads:

> A wholesaler shall maintain a stock book of every scheduled article to which his licence relates in which there shall be entered particulars of every purchase or sale by him of the scheduled article showing the date, quantity, price, and the name and address of the seller or purchaser, as the case may be, in respect of such purchase or sale.

Counsel for the appellant has rightly pointed out that unlike reg. 13(3), a wholesaler need not have to maintain a **daily** record and he argued that since no time has been stated when the entries are to be made, it follows that the entries need not have to be made up-to-date. It seems to me that Counsel for the appellant has overlooked s. 37 of the Interpretation Act 1967 which provides that "where a written law confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires". Although time has not been expressly specified in reg. 13(1) this should be read subject to s. 37 of the Interpretation Act 1967 and in my judgment, entries in the stock book

are to be made front time to time as occasions require them. As the purchases of sugar, a scheduled article, were made during the months of October and November 1980 entries in the stock book should have been made by the appellant or his agent on the various dates when the purchases were made or upon receipt of the said invoices if the date of the purchase and the receipt of the invoice happens to differ. As the appellant had totally failed to record these 6 purchases of sugar in the stock book during the months of October and November 1980 he was plainly guilty of reg. 13(1) of the Control of Supplies Regulations 1974.

I would now deal with the sentence imposed by the trial Magistrate in the Court below.

For the appellant it was submitted that the fine of RM3,000 was manifestly excessive and harsh for the following reasons:

(a) that the appellant was a first offender;

(b) that he had pleaded guilty to the charge;

(c) that he did keep a stock book (Ex. P2) albeit he had not maintained it up-to-date in respect of purchases made during the months of October and November 1980.

(d) that the offence complained of was an administrative one and that the public did not suffer any loss or disadvantage financially.

In support of these submissions Counsel for the appellant also relies on s. 27 of the Interpretation Act 1967 which provides that "Subsidiary legislation may provide for persons guilty of offences thereunder to be liable on conviction to a fine or a term of imprisonment or both, but may not provide for any such fine to exceed one thousand dollars or any such term to exceed six months".

The Senior Federal Counsel has argued that the provisions of s. 27 of the Interpretation Act 1967 do not apply to this case and that the section should not be used as a yardstick by the trial Magistrate for the purpose of sentence. If the Legislature had intended that maximum fine for an offence under reg. 13(1) of the Control of Supplies Regulations 1974 should not exceed RM1,000 express provision would have been so enacted in the said Regulations. The Regulations are silent as to penalties which can be found in s. 22 of the Control of Supplies Act 1961 (Revised 1973). Subsection 1 of s. 22 provides for a maximum sentence of RM15,000 or to imprisonment for a term not exceeding 2 years or to both for first offender; and for a second or subsequent offence, the maximum fine to be RM25,000 or 5 years imprisonment or to both. This subsection covers any person, other than a body corporate.

Subsection 3 empowers the trial Court either to cancel or to suspend a licence issued under s. 7 thereof in appropriate cases.

Senior Federal Counsel also drew the attention of the Court to the case of *Abu Bakar bin Alif v. R.* [1953] MLJ 19 where Spenser-Wilkinson J following the principles laid down in *R. v. Ball* 35 CAR 164 said:

> (i) the (appellate) Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence ... It is only when a sentence appears to err in principle that this Court will alter it;
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> (ii) the first and foremost consideration of punishment is the public interest ... Our law does not therefore, fix the sentence for a particular crime but fixes a maximum sentence and leaves it to the Court to decide what is the appropriate sentence in the particular circumstances of each case. It is for these reasons that evidence of antecedents and character should be taken before sentence in respect of each convicted person.

In the case of *PP v. Fam Kim Hock* [1957] MLJ 20 Buhagiar J said that the sentence of the Court of first instance should not be altered unless it is manifestly wrong, in the sense of being illegal or of being unsuitable to the proved facts and circumstances.

I agree with the submission of the Senior Federal Counsel that s. 27 of the Interpretation Act 1967 is irrelevant in considering the sentence to be passed on the appellant by the trial Magistrate, having regard to the express provision of s. 22 of the Control of Supplies Act 1961 (Revised 1973).

Now, what happened in the lower Court? The notes of proceedings of the trial Magistrate read:

> The accused is convicted on his own plea. Accordingly I fine the accused a sum of RM3,000 in default of 3 months' imprisonment. Exibits P2 and P3 to be returned to the accused person.

It is plain that the trial Magistrate did not record any evidence of antecedents and character of the accused before proceeding to pass sentence. In short, the trial Magistrate did not appear to have taken the following relevant factors into consideration:

(a) that the accused was a first offender;

(b) that the accused did maintain a stock book (Ex. P2) but had not kept it up-to-date and that the accused did not know that he had to maintain the stock book up-to-date; and

(c) that the accused had pleaded guilty to the charge.

Applying the principle stated in *Fam Kim Hock's* case *supra* I am satisfied that the fine of RM3,000 is manifestly wrong in the sense of being unsuitable to the proved facts and circumstances of this case. I therefore set it aside and substitute a fine of RM2,000 or in default 2 months' imprisonment. To that extent the appeal is allowed. Before departing from this appeal there is one other matter I would like to mention. It seems to me that the stock book maintained by the appellant here is not in strict compliance with reg. 13(1) of the Control of Supplies Regulations 1974 and it is to be hoped that immediate steps will be taken by him to rectify this shortcoming.

Also found at [1982] CLJ 160